

REMARKS

Claims 1, 4, 6-10, 12, 17, 28-30, 41-46 and 49-68 were currently pending as of the issuance of the Office Action dated October 14, 2008. According to the foregoing amendments, claims 1, 28-30, 41, 43, 44, 49, 57, 59 and 67 have been amended and claims 6, 7, 41, 42, 51, 52, 61 and 62 have been cancelled without prejudice. Accordingly, after the amendments presented herein have been entered, claims 1, 4, 8-10, 12, 17, 28-30, 43-46, 49, 50, 53-60 and 63-68 will remain pending in this application.

Support for the foregoing amendments to the claims can be found throughout the specification and in the claims as originally filed. For example, support for the amendments to claims 1, 41, 43, 44, 49 and 59 can be found at, for example, Figure 2, page 10, lines 1-5 and Table 1 at page 22.

No new matter has been added by the claim amendments presented herein. The amendments to the claims and the cancellation of certain claims should not be construed as an acquiescence to the validity of the Examiner's rejections and were done solely in the interest of expediting prosecution and allowance of the claims. Applicants reserve the right to pursue the claims as originally filed in one or more further applications.

CLAIM REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claim 49 is rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. Specifically, the Examiner is of the opinion that

[c]laim 49 is indefinite for reciting the phrase 'humanized or human' when describing the cartilage oligomer matrix polypeptide. The term humanized is generally associated with non-human antibodies which have been modified to contain human residues in the constant and framework regions, but retain non-human residues in the CDR regions. The specification defines humanized as forms of non-human (e.g., rodent) portions of the Peptabody, especially the humanized cartilage oligomer matrix polypeptide and the portion of a hinge region of an immunoglobulin polypeptide, refer to chimeric parts thereof that contain minimal sequence derived from non human immunoglobulin (paragraph 80). It is not clear from the claim or the definition, which residues of the cartilage matrix polypeptide are human and which are non-human since the polypeptide is not an antibody with defined CDR regions. Additionally, the specification discloses a human cartilage oligomer matrix polypeptide and one would not be able to humanize a human protein.

Applicants respectfully disagree. Notwithstanding the foregoing, solely in the interest of expediting examination and in no way acquiescing to the validity of the Examiner's rejections, Applicants have deleted reference to "humanized," thereby rendering the foregoing rejection moot. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of the claim 49 under 35 U.S.C. § 112, second paragraph.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH (ENABLEMENT)

Claims 1, 4, 6-10, 12, 17, 28-30, 41-46 and 49-68 are rejected under 35 U.S.C. § 112, first paragraph as allegedly lacking enablement. Specifically, the Examiner is of the opinion that

[c]laims 1, 4, 6-10, 12, 17, 28-30, 41-46 and 49-68 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a recombinant fusion peptabody which binds to an epidermal growth factor receptor comprising a specific portion of a cartilage oligomer matrix polypeptide (COMP 49 amino acids as shown in figure 2), a specific portion of a hinge region of an immunoglobulin polypeptide (19 amino acids from human IgA, see page 10 lines 1-5 and figure 2), an enhancer sequence, and specific epidermal growth factor receptor ligands in table 1, does not reasonably provide enablement for a recombinant fusion peptabody comprising just any portion of a cartilage oligomer matrix polypeptide, just any fusion protein comprising an enhancer sequence (claim 41). The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims.

Applicants respectfully traverse the foregoing rejection for the reasons of record. Notwithstanding the foregoing, solely in the interest of expediting examination and in no way acquiescing to the validity of the Examiner's rejections, Applicants have amended the pending claims in accordance with the Examiner's recommendations, thereby rendering the foregoing rejection moot. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of the pending claims under 35 U.S.C. § 112, first paragraph.

CONCLUSION

In view of the foregoing remarks, reconsideration of the rejections and allowance of all pending claims is respectfully requested. If there are any remaining issues or if the Examiner believes that a telephone conversation with Applicants' Attorney would be helpful in expediting prosecution of this application, the Examiner is invited to call the undersigned at (617) 227-7400.

The Commissioner is hereby authorized to charge any deficiency in the fees paid herewith, or credit any overpayment, to Deposit Account No. 12-0080, under Order No. KZY-002USRCE, from which the undersigned is authorized to withdraw.

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Respectfully submitted,

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